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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,421	12/14/2007	Thomas Baumgartner	2002P01289WOUS	2671

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EXAMINER

HECKERT, JASON MARK

ART UNIT	PAPER NUMBER
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1711

NOTIFICATION DATE	DELIVERY MODE
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01/03/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/537,421	Applicant(s) BAUMGARTNER ET AL.	
	Examiner JASON HECKERT	Art Unit 1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 10/27/10 have been fully considered but they are not persuasive. In regards to Choi, Choi teaches a magnet 5a mounted to one side of door 7. The applicant confirms this interpretation (see page 7 of arguments). While it is true that part 5b is located on the body, 5a is clearly stated as being located on the door. Thus, as stated previously, at least one part of the switch is located on the inside surface of the door. Claim 9 is regarded as intended use. Furthermore, the crockery basket is not positively recited is not recited in the independent claim, and it is only recited in a clause limiting the use of the apparatus. The lights of Choi are believed to be capable of illuminating the door to some degree. In additional, the door open state occurs at a set angle, which can be considered predetermined. The claims of the instant application do not point to a structure or operation that is any different from Choi. The rejection in view of Choi is maintained.
2. In regards to Lamb, the applicant appears to once again place emphasis on the the "predetermined pivoting angle" of the door. Keep in mind, that small angles, .25 degrees to 1 degree, can readily be considered predetermined angle. Lamb's device turns on the light when the pivoting angle of the door no longer places pressure on the push button switch. Thus, the pivoting angle when the switch is released reads on the claimed predetermined pivoting angle. The applicant does not positively recite structural differences that differentiate the instant application the prior art.

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3. The examiner finds flaws with two of the applicant's recurring arguments. First, the switch is never stated in the specification as being located "inside" the door. However, the drawings at best show the switch as being located on an inside surface on a side of the door. Secondly, the crockery basket that is located on the door is not permanently located on the door. It can be wheeled out on the door, which is conventional in the art. Thus, these arguments fail to present any sort of unconventional structure absent in the prior art.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 6-9 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 7,651,232. Although the conflicting claims are not identical, they are not patentably distinct from each other because the published patent claims a door, switch, and illumination device that works in the same manner as the instant application.

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Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 6-9 rejected under 35 U.S.C. 102(b) as being anticipated by Choi (US 5,795,052). Choi discloses a washing machine readable on the claimed dishwasher (applicant does not provide any limitations that contrast the “dishwasher” from any other

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type of washer). The device includes a door pivotable about a horizontal axis, a switch 5 of which at least one portion is located inside the door, and a light source 8 located in the machine interior that illuminates the machine when the door is open.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 6-9 rejected under 35 U.S.C. 103(a) as being unpatentable over Lamb (3,619,592). Lamb discloses a dishwashing machine comprising a pivotable door, a switch 38 capable of generating an electric signal when the door is open, and a light source 30 that illuminates the interior of the machine when the switch is activated (claim 1). Lamb discloses each and every limitation of the claimed invention except for the fact that the switch is located on the door. Lamb's is located on the door frame. However, the device still functions in the same manner, illuminating a bulb when the door is open. Relocating the switch is considered to be obvious, as it is a mere rearrangement of previously disclosed parts that fails to present unpredictable results. Rearrangement of parts was held to have been obvious. *In re Japikse* 86 USPQ 70 (CCPA 1955). It would have been obvious to one of ordinary skill to relocate the switch, in order to cause a light to function when the door is open.

4. Claims 10-11 rejected 35 U.S.C. 103(a) as being unpatentable over Lamb OR Choi and further in view of Thompson et al. (US 4,894,643). Lamb and Choi both

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disclose switches that illuminate the interior of a washing machine when the door is open. They do not, however, disclose an acoustic alarm that sounds if the door is open for an extended period of time. Thompson discloses an appliance door alarm apparatus that performs this function—alerting the user after a predetermined time. The device includes an alarm connected to a switch. One of ordinary skill at the time of invention could implement such a simple device the apparatus of Choi or Thompson, with the expected result of sounding an alarm to warn the user of an open door.

5. Claims 12 - 14 rejected under 35 U.S.C. 103(a) as being unpatentable over Burnett in view of Lamb. Burnett teaches a dishwasher with a door pivotable around a horizontal axis (figure 1). The device includes an angle-sensitive switch mounted in a housing on the door for illuminating lights 20 when the door is in the open position (col 2 lines 5-10). The lights are not located in the interior of the washing machine. Lamb discloses a light source 30 that is located in the interior of the machine and illuminates the door and interior when the door is opened. It would have been obvious at the time of invention to modify Burnett, and relocate the lights, or add new lights, to the interior of the machine, as disclosed by Lamb, in order to illuminate the crockery when the door is open. The switch of Burnett is angle-sensitive, and is believed to be capable of operating in the same manner as described in claim 13. Furthermore, it is well settled that determination of optimum values of cause effective variables such as angle of inclination is within the skill of one practicing the art. *In re Boesch*, 205 USPQ 215 (CCPA 1980). Such a modification would be routine to one of ordinary skill and provide

predictable results. Both Burnett and Lamb disclose doors that can support the crockery basket when they are wheeled out of the interior, as is conventional in the art.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON HECKERT whose telephone number is (571)272-2702. The examiner can normally be reached on Mon. to Friday, 9:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JMH

/Michael Kornakov/

Supervisory Patent Examiner, Art Unit 1714